TESORO

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Electronic Submittal

RE: Comments on the Washington State Clean Fuel Standard Discussion Draft

Tesoro appreciates the opportunity to comment on the discussion draft of the Clean Fuel Standard (CFS) and be involved in the stakeholder process. Tesoro reliably provides a substantial volume of clean gasoline and diesel to the Washington market and has a tremendous interest in the potential impacts of the CFS to that reliable fuel supply.

We understand that the Western States Petroleum Association has provided comments on this discussion draft and Tesoro is supportive of those comments as well.

A CFS is not the most effective way to meet Washington's goals

The following discussion includes goals that the state asserts the CFS achieves and why Tesoro believes that the CFS is not the optimal way to attain these goals. The goals from the state are underlined.

Clean fuels often are produced locally which reduces dependence on imported oil and puts dollars into the local economy.

This is a worthy goal, particularly with the biofuel feedstock resources available in the state. However, as we have seen in California, most of the biofuels that produce credits come from out of state. Most of the ethanol has come from out of state, including some from Brazil. As the carbon intensity obligation becomes more restrictive, there will be an increasing reliance on out of state sugar cane ethanol and cellulosic supplies (assuming they exist in sufficient quantities). Renewable diesel, which has been touted as the unexpected, new fuel that has been supplied to California, has largely come from Singapore. While the CA LCFS has provided some support for in-state biofuel production, it has not generated substantive construction of production facilities in California. It should also be noted that most, if not all, of the in-state facilities received direct monetary support from public funding programs outside of the LCFS (i.e., CEC funding under AB118) which begs the question as to whether the CFS really provides a strong enough signal to accomplish this objective. At best, the CFS is a weak, and perhaps temporary signal, that may or may not help local production interests; and at its worst, Washington runs the risk of trading imported biofuels for imported oil and falling short of this goal. The state should consider more direct funding support to such facilities that would advantage them to provide supply both in-state and out-of-state under the national renewable fuel standard (RFS).

Washington would see growth in jobs, personal income and gross state product as a result of a clean fuel standard.

As stated above, the CFS will only provide a weak signal toward creating in-state jobs. As for economic growth – even California has now admitted, in the CA LCFS re-adoption package, that the LCFS could result in direct costs to the consumer of upwards of 2 billion dollars vs. their original cost savings estimate of 11 billion dollars in 2009. Washington should not start this process under the same optimistic premise that California did in 2009.

A clean fuels standard would spur innovation and competition in the fuel industry.

While Tesoro understands the state's desire in this regard, it is hard to imagine that having a CFS program in WA state will spur incremental innovation over what has been accomplished in the national RFS program. Not only is there very little to no incremental demand that could be created by a WA state CFS overlay on top of the RFS, there are simply limits to the innovation that can be spurred by regulation. For example, the RFS has sent a strong signal for cellulosic ethanol for several years – but progressing complicated technology can't be forced 'ahead of its time'. In our opinion, more problems can result that create regulatory uncertainty and potential adverse impact to reliable fuel supplies from placing an aspirational goal in regulation that is not attainable over the time horizon specified. Tesoro has no doubts that there will be advancements in biofuels that will bring more capacity on-line, but this will not be the result of another state CFS program.

Electricity as a transportation fuel is another example. The main impediments are vehicle cost and customer acceptance – not fuel innovation. The fuel is readily available and cost effective. If WA State wants to secure a future for electric vehicles (EVs), more direct public funding for vehicle rebates, tax incentives, and charging infrastructure is needed. The LCFS provides almost no incentive in this regard. Just look at California as an example. CA has surpassed 100,000 EVs in state without incentive from the LCFS as the utilities and charging infrastructure providers were unable to sell credits and return the value to customers until recent utility commission laws were changed. The high level of EV purchasing seen to date in California has come from substantial vehicle rebates, customer outreach and a long-standing regulatory approach (the Advanced Clean Car Program). Any LCFS credit value going forward is miniscule and weak compared to the signals sent by these other incentive and regulatory mechanisms in CA.

Washington would reduce its dependence on foreign oil.

To the extent this goal is related to petroleum product displacement through the advancements of alternatives, Tesoro points to the discussion and examples above as evidence that the CFS is a weak incentive at best in this regard and that there are more direct ways to achieve this goal.

If this goal stems from the potential signal that the CFS can send because the discussion draft includes a crude differentiation component, Tesoro strongly suggests the state dismiss this concept. At best, the CA LCFS crude differentiation approach has been an unnecessary complexity and resource drain in the regulation as the average crude CI has not changed since the start of the program. At its worst, it can cause crude shuffling resulting in greater global emissions. Minimizing reliance on foreign sources of crude is a worthy state goal considering its refining base. The most effective way for WA State to do this is to incentivize domestic sources of crude. In fact, both the WA and CA GREET models indicate that crude from North Dakota has a relatively low carbon intensity. Supporting in-state projects to enable more crude from North Dakota would accomplish this goal of reducing foreign crude imports and reducing global GHG emissions – and in a much more direct and efficient manner than the CFS.

Less air pollution is better for our health.

This is a true statement – but it is questionable whether the CFS will provide any benefit in this regard. As stated above – most of the investment in alternative fuel occurs outside the state and so do the lifecycle emission reductions (GHG and criteria pollutants). To the extent that biofuel facilities are built in-state, there may be localized, increased emission impacts. Moreover, some fuels, like biodiesel, may cause increased emissions in older engines. EVs certainly have the potential to decrease mobile source emissions, particularly given WA States clean power grid, but as stated above, the CFS will not provide much incentive in this regard compared to other programs. Bottom-line – this is another worthy goal but the CFS will not accomplish much in this regard compared to other programs.

Comments regarding the discussion draft provisions

Notwithstanding Tesoro's belief that the CFS is not an effective policy for WA state, Tesoro would like to offer direct comments on provisions in the regulation.

The reliance on banked credits in early years to supplement known shortfalls in the latter years is a flawed design element of the proposal. This tact presumes over-compliance by regulated parties in the early years to compensate for known infeasibility in the latter years stemming from an unrealistic compliance schedule. It also presumes that the market will work perfectly with all banked credits matching need and flowing to where that need is. No market will work this perfectly. This creates real uncertainty for regulated parties who face tying up working capital early in the program with a high likelihood that the obligation will have to be adjusted when aspirational goals are not met. Take California as an example – credit values were four times higher than they are now just a couple of years ago as the program began to get more stringent. With the obligation now frozen, credits purchased at the peak are significantly devalued now and were not a good investment. Designing this need into the program at the outset is not wise. The concept of credit banking is a good element in the program as a hedge against unforeseen fuel shortfalls in the future, but should not be relied on as a crutch for an unrealistic compliance schedule.

Definitions – starting p. 75

Please replace the current biodiesel definition with the following definition:

"Biodiesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel meeting all the following:

(A) Registered as a motor vehicle fuel or fuel additive under 40 Code of Federal Regulations (CFR) part 79;

(B) A mono-alkyl ester;

(C) Meets ASTM D6751-08 (2014)

(D) Intended for use in engines that are designed to run on conventional diesel fuel; and

(E) Derived from nonpetroleum renewable resources.

Product transfer document – Tesoro requests that the definition be modified to include that the "Product Transfer Document" means a document, or a set of documents, that..." "...~~A PTD is created by a regulated party to contain information collectively supplied~~. Such documents include, but are not limited to, Bill of Lading,..."

<u>Regulated party status for regulated fuel – starting page 10</u>

(5)(a)(i)(G) and Table 5 on page 62 - Tesoro does not believe the production facility ID and the Company ID should be included in all transaction documents. In many cases, multiple facilities and companies could produce biofuel with the same CI. Once these fuels are introduced into fungible systems where biofuels of the same CI cannot be distinguished, it should no longer be required to be tracked. This information should be included only for the initial transaction in the state of California (either production or importation), but not in further transactions, as the recordkeeping burden and the potential for mistakes and associated non-compliance penalties outweighs the perceived benefit of tracking this information

(5)(b)(i) - Tesoro does not support inclusion of the requirement for the buyer to notify the seller as to whether a company is a producer or importer. The typical transaction is completed entirely with the seller's paperwork and the only buyer response would be to reject a term. No response implies acceptance after a customary 10-day period. This would create a huge burden on a transaction-by-transaction basis. If Ecology is presuming this communication is done verbally, then how is it documented in order to show compliance? If the seller's contract passes the obligation on to the buyer, by default, can it be assumed that the buyer communicated their status to them? Can Ecology post entity status on the website and enable this to be the communication tool by directing sellers to the website?

<u>Credit generator status for electricity – starting page 16</u>

The provisions seem to omit protocols for measuring the amount of electricity supplied to eligible vehicles. Tesoro suggests that metering be required so that the accuracy of 'volume' of fuel dispensed and resultant credit validity is robust and consistent with the accuracy requirements related to the dispensing of other fuels.

Also, Tesoro suggests that the residential EV charging reporting requirements be enhanced to include the number of EVs in a service territory, but also the number of plug-in vehicles in various categories (i.e., pure electric vs. plug-in hybrids by range).

Recordkeeping – starting page 24

(2)(b)(ii) – Tesoro has concerns about the practicality and fairness of the requirement to account for exports. We find it impractical as it will be very difficult for fuel suppliers to ensure that the ultimate exporter communicates their activities backward through the supply chain. It also puts an unfair compliance burden on the original transferor by potentially taking credits away from that transferor because of another party's decision to export. It is understandable that ARB would want to track the export of such fuels, but the compliance cost/benefit of that export should accrue to the exporter and not to another party who has no control over their decision to export.

Quarterly Progress Reports – starting on page 25

(2)(b)(i) – Tesoro does not agree with the blanket statement that Ecology is not responsible for the failure of electronically submitted reports. There may be situations where the electronic reporting system is not functioning properly when reporting is required and failure to submit is not the fault of the reporting party. There needs to be some expanded provisions, work-arounds, or enforcement discretion provided for such situations.

Fuels to include in credit calculation – starting on page 30

(2) – this section defines fuels exempt from credits. However – these same exemptions should apply to the generation of deficits as well. For example, exported blendstock or diesel should not be subject to deficit accounting under the LCFS.

Calculating credits – starting on page 30

(4)(f) – This provision states that Ecology can reverse or adjust credits as necessary. The process for doing this needs to be better specified to provide for robust communication with impacted regulated parties prior to any such adjustments or reversals being made.

Look-Up tables – starting on page 51

The WAD-01 and 02 pathway values in Table 4 do not match the values in the table on page 43.

Also, Tesoro recommends that all look-up tables be based on Washington-specific data in contrast to Ecology's proposal to just incorporate CA values. Tesoro believes that such values should be based on sound science and using CA values for a different state is not sound science. Tesoro understands that Ecology is proposing Washington-specific values for gasoline and diesel, and believes that it is more equitable to include similar values for the other fuels.

p. 36 – Provisions for Increases in the Carbon Intensity of Crude Oil

In Ecology insists on continuing with an approach involving crude differentiation, then Tesoro asks that Ecology include provisions to enable credit for innovative crude GHG reductions and consider incremental credits be provided for average crude CI reductions below the baseline.

Similarly, provisions enabling refiners to garner credits for valid GHG reduction projects at refineries should be included as well. Alternative fuel providers are able to generate credits for changes to any part of their lifecycle analysis. It is only equitable that refiners of conventional fuels can as well.

Tesoro appreciates the opportunity to submit comments on the CFS discussion draft. Please contact me at (916) 462-5062 if you have any questions.

Sincerely,

Miles Heller
Director, CA Fuels and Regulatory Affairs